Filed: 9/9/2020 11:56 AM
Lynne Finley
District Clerk
Collin County, Texas
By Tatiana Ortega Deputy
Envelope ID: 46074698

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

NO. 417-53803-2020

IN THE INTEREST OF	§	**IN THE DISTRICT COURT**
	§	
S.L., J.L. AND L.L.	§	**417TH JUDICIAL DISTRICT**
	§	
CHILDREN	§	**COLLIN COUNTY, TEXAS**

FIRST AMENDED EMERGENCY MOTION TO DENY PETITION FOR WRIT OF HABEAS CORPUS

AND REQUEST FOR SANCTIONS

This *First Amended Emergency Motion to Deny Petition for Writ of Habeas Corpus and Request for Sanctions* is brought by Petitioner/Father Michael Long, who would show as follows:

1. On or about September 5, 2020 (a Saturday), all counsel was given notice that the former judge in this matter requested a "conference" with the attorneys, and that the parties themselves were not to be in attendance. This was to take place on September 7, 2020 at 9am.

2. On September 7, 2020 at 9 a.m. (a court holiday), the former judge held a phone conference with the counsel without the parties present, and without any advance notice to counsel for Petitioner what the subject of the conference was to be. The conference was not recorded in any manner, and there is no record of the conference. The judge and counsel talked for about one hour, and the former judge made known her intent to make orders concerning, among other things, the possession of and access to the children in this suit.

3. Thereafter, at approximately 4 p.m. on September 7, 2020, counsel for Respondent provided a proposed order entitled "Additional Temporary Orders in Suit Affecting the Parent-Child Relationship" to counsel for Petitioner and to the judge. Later in the evening, the judge signed the order in the exact form tendered by Respondent's counsel without giving Petitioner or his counsel any

proper notice, an opportunity to be heard or object to the order, or an opportunity to present evidence or make motions. Thereafter, the judge filed to voluntarily recuse herself from this case.

4. **The Additional Temporary Orders in Suit Affecting the Parent-Child Relationship was granted by a court that did not give the contestants reasonable notice of the proceeding and an opportunity to be heard. Therefore, it cannot support a writ for habeas corpus as requested by Respondent. TEX. FAM. CODE § 157.372(b).**

5. Thereafter, on September 7, 2020, counsel for Petitioner filed a *Motion for Temporary Restraining Order* asking to prevent Respondent from removing the children from his possession, amongst other relief. In support of emergency relief, Petitioner attached a supporting affidavit.

6. On or about September 8, 2020, Respondent/Mother Kelly Long filed her Petition for Writ of Habeas Corpus, using the Additional Temporary Orders in Suit Affecting the Parent-Child Relationship as its basis.

7. The Petition for Writ of Habeas Corpus was served on counsel for Petitioner/Father at approx. 11 a.m. on September 8, 2020.

8. A few minutes prior, at approximately 10:58 a.m., Counsel for Petitioner contacted the Court coordinator, cc'ing all other counsel, and asked to which judge Petitioner's pending emergency motions should be directed. The response was that a judge would be named at a later, non-specified time, that the Emergency Motion for Temporary Restraining Order would not be heard until the following afternoon, and other relief had been granted without notice or motion by an unidentified judge. No written order was been provided, though several requests have been made.

9. At no time did Counsel for Respondent/Mother provide notice to counsel for Petitioner/Father that he would be approaching the Court for *ex parte* relief, in violation of Rule 2.4(a) of the Local Rules of Collin County District Courts.

10. Thereafter at approximately 1:29 p.m. on September 8, 2020, counsel for Petitioner contacted counsel for Respondent concerning another issue in the case and learned for the first time that **Respondent's counsel had *ex parte* communications with at least one, if not more, judges regarding the case and the Petition for Writ of Habeas Corpus- to include requesting (again, *ex parte* and without notice) outside of the Petition for additional other relief which apparently had been granted by the unidentified judge, again, without written motion, notice, or hearing or an opportunity for Petitioner/Father to be heard.**

11. Thereafter at approximately 1:18 p.m., counsel for Respondent filed a proposed Writ of Attachment, ordering the attachment of all three children the subject of this suit. The order cited does not support Respondent taking possession of the child, S.L.

12. At this time, no formal order has been provided to Counsel for Petitioner reflecting to which judge emergency motions should be directed in this matter. It has been communicated that no judge will hear Petitioner's Motion for Temporary Restraining Order until September 9, 2020 at 1:30 p.m. **In other words, an undisclosed judge appears to be having *ex parte* communications and making orders in this matter at Respondent's counsel's request, yet denying Petitioner equal access to the Courts.**

13. The previous order was granted by a court that did not give the contestants reasonable notice of the proceeding and an opportunity to be heard. Therefore, it cannot support a writ for habeas corpus as requested by Respondent. TEX. FAM. CODE § 157.372(b). The Court may not render any order compelling return of any child based on that order. *See* id.

14. On September 9, 2020 at approximately 10:30 a.m., counsel for Respondent filed a First Amended Petition for Writ of Habeas Corpus, alleging that a different order should support an *ex*

parte extraordinary writ. The First Amended petition for Writ of Habeas Corpus refers to this order as "the most recent valid court order."

15. There seems to be a lack of understanding, clarity, or consensus on which order currently governs possession of the children. The following orders have been entered in this matter which affect possession of and access to the children:

a. Final Decree of Divorce- July 24, 2015

b. Order in Suit Affecting the Parent-Child Relationship – July 9, 2020 (based on Mediated Settlement Agreement of 2017; basis for First Amended Petition for Writ of Habeas Corpus)

c. Temporary Restraining Order and Order Setting Hearing- July 28, 2020 (was not dissolved after hearing on August 12, 2020)

d. Temporary Restraining Order and Order Setting Hearing- August 14, 2020

e. Temporary Orders – August 20, 2020

f. Temporary Restraining Order and Order Setting Hearing for Further Orders- August 28, 2020

g. Memorandum Order- September 2, 2020- entered *sua sponte* by former judge without notice or hearing

h. Order Granting Petitioner's Motion for Continuance and Additional Temporary Orders- (verbally rendered on September 3, 2020, but not yet entered; no hearing or evidence offered, only discussion of judge and counsel following grant of Motion for Continuance)

i. Additional Temporary Orders in Suit Affecting the Parent-Child Relationship- September 7, 2020 (no notice or hearing, only phone conference between former judge and counsel with parties expressly excluded; basis of Petition for Writ of Habeas Corpus filed by Respondent on September 8, 2020)

16. Multiple orders have been entered in this matter in a very short period of time on an *ex parte* basis, and several without notice, hearing, or any evidence being offered into the record. In addition, prior to the Petition for Writ of Habeas Corpus being filed, Petitioner filed an Emergency Motion for Temporary Restraining Order, which has yet to be heard. Because there seems to be a lack of understanding, clarity, or consensus on which order currently governs possession of the

children, and because there is a pending emergency motion, an extraordinary writ is not appropriate at this time.

17. Both the Petition for Writ of Habeas Corpus and the First Amended Petition for Writ of Habeas Corpus have multiple exhibits attached. Respondent objects to these exhibits as follows:

a. Exhibit 1- As explained more fully herein above, the order is not based on any motion, evidence, or hearing, nor was Petitioner afforded notice or an opportunity to be heard. As such, the order cannot support issuance of a writ.

b. Exhibit 2- As explained more fully herein above, **seven orders** have been entered in this matter affecting possession of and access to the children after the date this order was entered. There is a lack of clarity on which order governs at this time, and there is a pending Emergency Motion for Temporary Restraining Order. As such, this order cannot support issuance of a writ.

c. Exhibit 3- Unauthenticated; Lacks foundation; Hearsay; Rule of Optional Completeness; Relevance; Res Judicata

d. Exhibit 4- Unauthenticated; Lacks foundation; Hearsay; Rule of Optional Completeness; Relevance; Res judicata

18. Neither of Respondent's Petitions for extraordinary writ are supported by any admissible or competent evidence.

19. Both Petitions filed by Respondent make unsupported conclusory allegations that "Respondent's continued possession of the children will create and is creating a serious, immediate threat to the children's physical and emotional well-being." No evidence is attached to either pleading that would support such conclusory allegations.

20. Under Rule 13 of the Texas Rules of Civil Procedure, the court shall impose an appropriate sanction when a party signs an instrument which is either groundless and brought in bad faith or groundless and brought for the purpose of harassment. These sanctions can be imposed upon the person who signed it, a represented party, or both.

21. Respondent's Petition for Writ of Habeas Corpus and First Amended Petition for Writ of Habeas Corpus, as well as the other oral *ex parte* motions, known and unknown to Petitioner, are groundless and brought in bad faith or groundless and for the purpose of harassment.

22. Petitioner asks the Court to make the appropriate findings and issue sanctions against Respondent in accordance with the relief requested herein, to include assessing all reasonable and necessary attorney's fees incurred by Petitioner in this effort against Respondent as an interest bearing judgment.

Petitioner/Father Michael Long prays that the Court grant this *First Amended Emergency Motion to Deny Petition for Writ of Habeas Corpus*, and deny Respondent/Mother's Petition for Writ of Habeas Corpus and First Amended Petition for Writ of Habeas Corpus. Petitioner/Father further prays that Respondent be ordered to disclose to Petitioner all oral motions for affirmative relief in this matter made by counsel for Respondent *ex parte*, without any notice to Petitioner or his counsel or an opportunity to be heard, and that all such oral *ex parte* motions be denied. Petitioner further prays the Court find that Respondent's Petition for Writ of Habeas Corpus and Respondent's First Amended Petition for Writ of Habeas Corpus are both groundless and brought in bad faith, or groundless and brought for the purpose of harassment, and to order an appropriate sanction under Rule 13 of the Texas Rules of Civil Procedure. Petitioner prays for general relief

Respectfully submitted,

LISHMAN LAW, PLLC
310 S. St. Mary's St., Suite 2500
San Antonio, Texas 78205
Phone: (210) 328-5003
Email: sarahannelishman@gmail.com

Sarah Anne Lishman

Sarah Anne Lishman
State Bar No. 24086267

Of Counsel to JAMIE GRAHAM & ASSOCIATES, PLLC,
Attorneys for Michael Long

JAMIE GRAHAM & ASSOCIATES, PLLC
310 S. St. Mary's St., Suite 2500
San Antonio, Texas 78205
Tel. (210) 308-6448
Fax (210) 308-5669

Jamie L. Graham
State Bar No. 24027335
Tracy E. Ross
State Bar No. 24037399
Erin L. Groce
State Bar No. 24054546
Alicia M. Galvany
State Bar No. 24062734
Caroline L. Hulett
State Bar No. 24069961
Email: jamie@jamiegrahamlaw.com
Email: erin@jamiegrahamlaw.com
Attorneys for **MICHAEL LONG.**

Certificate of Service

This is to certify that, pursuant to Rule 21 of the Texas Rules of Civil Procedure, a true and correct copy of the foregoing document has been served upon the below-named individual in the following manner as prescribed by Rule 21(a) of the Texas Rules of Civil Procedure on this the 9th day of September, 2020.

____ Hand Delivery ____ Federal Express ____ Certified Mail, Return Receipt Requested
____ Regular Mail ____ Facsimile __X__ Email __X__ E-Service

LAW OFFICES OF AMBER SHEMESH, P.C.
Amber Shemesh
12222 Merit Drive, Suite 1200
Dallas, Texas 75251
Tel: (214) 432-2501
Fax: (214) 432-2510
Email: amber@shemeshfamilylaw.com
Attorney for Respondent, **KELLY LONG**

THE ROUTON LAW FIRM PLLC
1670 Keller Parkway, Suite 253
Keller, Texas 76248
Tel. (817) 16-0734
Fax (817) 841-8324
Email: david@routzonlaw.com
Attorney for Respondent, Kelly Long

By: Sarah Anne Lishman
Jamie L. Graham
Erin L. Groce
Sarah Anne Lishman
Attorneys for **MICHAEL LONG**

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Sarah Lishman on behalf of Sarah Lishman
Bar No. 24086267
sarahannelishman@gmail.com
Envelope ID: 46074698
Status as of 9/9/2020 12:01 PM CST

Associated Case Party: Michael Long

Name	BarNumber	Email	TimestampSubmitted	Status
Erin Groce	24054546	erin@jamiegrahamlaw.com	9/9/2020 11:56:11 AM	SENT
Jamie Lynn Heggy Graham	24027335	jamie@jamiegrahamlaw.com	9/9/2020 11:56:11 AM	SENT
Michael Long		rightrocks444@gmail.com	9/9/2020 11:56:11 AM	SENT
Sarah AnneLishman		sarahannelishman@gmail.com	9/9/2020 11:56:11 AM	SENT
Irene Gonzales		irene@jamiegrahamlaw.com	9/9/2020 11:56:11 AM	SENT

Associated Case Party: Kelly Long

Name	BarNumber	Email	TimestampSubmitted	Status
Amber Shemesh		amber@shemeshfamilylaw.com	9/9/2020 11:56:11 AM	SENT
David Routzon		david@routzonlaw.com	9/9/2020 11:56:11 AM	SENT
Elyssa Hudgins		elyssa@routzonlaw.com	9/9/2020 11:56:11 AM	SENT
Adriana Cancino		acancino@shemeshfamilylaw.com	9/9/2020 11:56:11 AM	SENT
Alexandra Willen		awillen@shemeshfamilylaw.com	9/9/2020 11:56:11 AM	SENT